

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1143 of 1997
in
SPECIAL CIVIL APPLICATION No. 5534 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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DABHI VEENABEN

Versus

DY SECRETARY

Appearance:

MR KETAN D SHAH for Petitioner
MR VH DESAI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT
Date of decision: 16/10/97

ORAL JUDGEMENT {Per : Thakkar, J.}

Appellant-Petitioner approached this Court for quashing and setting aside the order dated July 12, 1996 by which permission was granted to close down one class each for Standards I to V, with effect from June, 1996 on

the condition that institute is running in loss. The case of appellant-petitioner was that it was not true that the school was running in loss. On the contrary, sufficient number of students were there and contrary to the provisions of Bombay Primary Education Act, 1940 and Bombay Primary Education Rules, 1949, registers were prepared and additional students were admitted and instead of that such an order was obtained from the Government. It was also contended that the order and/or permission which was granted on July 12, 1996 could not be said to be final and conclusive inasmuch as it was a qualified and conditional one wherein it was mentioned that the Director of Primary Education would consider the necessity or otherwise of granting permission to close down certain classes in Standard I to V and after taking into account the financial position of the Institute, if he was satisfied that it runs into loss then and then only such a permission should be granted.

It is not in dispute that inspite of so-called notice of termination, the proceeding would lie before the Primary Education Tribunal and such an application is filed by the appellant and is pending before the Tribunal, the limited question before the learned Single Judge as well as before us was regarding the grant of permission to close down certain classes. When the matter was placed before the learned Single Judge, the learned Single Judge was pleased to dismiss it observing that the learned Single had called for the record and has gone through the file which was produced by and on behalf of the Deputy Secretary, Education Department and the learned Single Judge observed that, "I am convinced that necessary inquiry has been held as per the requirement of Schedule-F of the Bombay Primary Education Rules. The authority has, in fact, considered the financial condition, the inadequate strength of the students in the classes in question and the resolutions passed by the respondent trust for obtaining necessary permission for closing down the classes, etc." Mr. Shah, learned counsel for appellant contended that when the permission was conditional in nature, it was incumbent on the part of the authority to hold inquiry after the said order, and no such inquiry was held thereafter, and therefore, the order is vitiated. He further submitted that the learned Single Judge has committed an error of law in observing that "at this stage", the learned Single Judge did not thought fit to interfere with the order passed by the Authority. According to him, only "at this stage", the petitioner-appellant can approach this Court. So far as termination is concerned, it was an independent action and independent remedy is available to her and she could

not file a petition against such an order directly. Finally, he submitted that the impugned action is clearly illegal as according to the learned Single Judge, alternative remedy is available to her. Mr. Shah contended that this is the only remedy available to the appellant-petitioner by filing a petition against the action of grant to close-down certain classes in some standards, no other alternative remedy is available.

In our opinion, the order passed by the authorities and confirmed by the learned Single Judge does not require any interference. It is true that it is not mentioned as to when the inquiry was held, since the learned Judge has perused the record, the learned Judge was satisfied. But when the appeal was filed, we also directed the authority to file Affidavit, and accordingly, Deputy Director of Primary Education had filed an affidavit. Looking to the said Affidavit also, it is clear that inquiry was held and the authority was satisfied about the necessity of granting permission, and accordingly, the permission was granted. In such matters, the inquiry by this Court is very much limited and that such orders are subject to judicial review. But, in the facts and circumstances, once the power is exercised bona fide, the Court will not exercise appellate jurisdiction. Hence, if the authority was satisfied, taking into account the overall circumstances and attending facts, such an order does not call for any interference. Regarding the contention that at this stage, the learned Single Judge did not think it fit to interfere, Mr. Shah is right that when the appellant was approaching this Court against that order, without anything more, she could approach this Court as this is the remedy available for her. But, at the same time, the learned Single Judge was right that she could raise all objections available in law as and when any action regarding termination would be taken against her. We may also clarify that all objections available to her can be taken up by the appellant before the Tribunal and the order passed by the learned Single Judge or by us would not come in her way. So far as the impugned order is concerned, no interference is called for. We do not see any substance in the present Letters Patent Appeal, hence, dismissed. No order as to costs.

Prakash*